

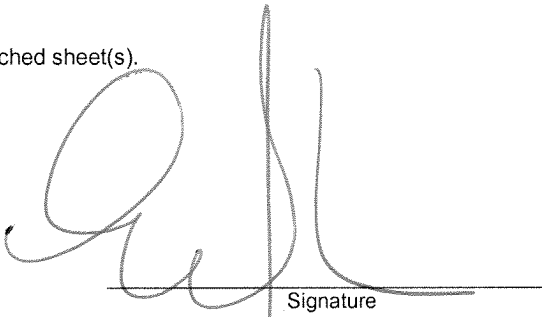
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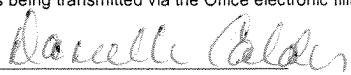
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		M1103.70784US00	
	Application Number	Filed	
	09/894,642-Conf. #1958	June 27, 2001	
	First Named Inventor Kenneth H. Abbott et al.		
	Art Unit	Examiner	
	2444	J. M. Cloud	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>32,950</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> <p> _____ Signature Edmund J. Walsh Typed or printed name</p> <p>_____ 617.646.8000 Telephone number</p> <p>_____ September 14, 2011 Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			

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Dated: September 14, 2011	Signature: 

2449006

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant respectfully requests review of the rejections set forth in the Final Office Action (dated June 14, 2011).

Claims 66, 67, 71, 72, 74, 75, 77, 78, 82, 174, 175, 181, 184-189 and 193-194 are pending in this application, with claims 66, 186 and 192 being independent claims.

Claims 66, 67, 71, 72, 74, 75, 77, 78, 82, 174, 175, 181, 184-191 and 193-194 are rejected under 35 U.S.C. §102(e) as being anticipated by Jacobson et al. These rejections should be reversed because each claim recites at least one limitation not disclosed in Jacobsen.

Claims 186-189 are rejected under 35 U.S.C. §103(a) based on Jacobsen et al. in view of Grube et al. (US Patent No. 6,031,455). These rejections should be reversed because each claim recites at least one limitation, for which Jacobsen is cited, that is not disclosed in Jacobsen. These rejections should be reversed for the further reason that the Final Office Action provides no reason to combine references related to disparate subjects and, therefore, fails to make a *prima facie* case of obviousness.

A Pre-Appeal Brief Conference is appropriate because the rejections are clearly improper.

Accordingly, the rejections of independent claims 66, 186 and 192 and their dependent claims should be withdrawn.

Claim Rejections – 35 U.S.C. §102

The Office Action rejects claims 66, 67, 71, 72, 74, 75, 77, 78, 82, 174, 175, 181, 184-191 and 193-194 under 35 U.S.C. §102(e) as being anticipated by Jacobson et al. Applicants respectfully request that these rejections be reversed because the Final Office Action fails to reasonably identify features of the reference that meet each limitation of the claim.

Independent Claim 66

The rejection should be reversed because the Final Office Action fails to identify features of Jacobsen that could reasonably be interpreted as meeting limitations of claim 66, which recites, among other elements:

A method for operating a user characterization system, which executes on a computer separate from a remote user wearing a thin client wearable computer, to provide information about a current state of the remote user of the thin client wearable computer, ...the method comprising:...

automatically, with at least one processor, computing values of other state attributes based at least in part on the sent values of the state attributes, the computing generating a value *characterizing a physical activity of the user* from the sent values of the state attributes, the physical activity being at a higher level of abstraction and the sent values being at a lower level of abstraction;...

providing a value for at least one of the computed other state attributes *to the thin client wearable computer*, said value indicating the physical activity of the user.

The rejection of independent claim 66, and its dependent claims, must be reversed because the reference does not disclose “...*characterizing a physical activity of the user*...” Under the Response to Arguments, the Final Office Action asserts that determining whether the user has been injured, is losing blood or is suffering from hypothermia constitute physical activity of a user. However, any of the conditions of being injured, losing blood or suffering can exist while a user is completely passive and cannot meet the limitations of the claim relating to characterizing a physical activity of the user.

The rationale applied by the Final Office Action is particularly inappropriate with respect to other claims, such as claims 184 and 185 where the physical activity is more specifically defined as “exercising” and “talking,” respectively. The Final Office Action fails to address these limitations in any meaningful way. For any of the foregoing reasons, the rejection must be reversed.

As a second reason that the rejections must be reversed, regardless of whether the reference describes a characterization system that determines a physical activity of the user, the reference contains no disclosure of providing a value indicating the physical activity to the thin client wearable computer. However, claim 66 recites: “providing a value for at least one of the computed other state attributes to the thin client wearable computer, said value indicating the physical activity engaged in by the user.” The Final Office Action does not identify any specific action in Jacobsen

that could be a characterization system executing on a computer separate from a thin client wearable computer providing such a value indicating physical activity of the user.

As understood, the Final Office Action equates the soldier unit of Jacobsen with the thin client wearable computer of the claim. Even with this mapping of the claim on the reference, there is no disclosure in Jacobsen of a value indicating the physical activity being communicated to the soldier unit. Though the Final Office Action (page 5) cites several passages of Jacobsen in connection with this limitation, the Final Office Action fails to identify any action disclosed in those passages that meets the limitation of the claim. The cited passages are understood to only describe functions unrelated to providing a value indicating physical activity of the user from a characterization to a thin client wearable computer. Those passages relate to monitoring the soldier unit or sending a command to the soldier unit. These activities may entail communication between the soldier unit to a command unit, which may include sending information, such as a command, to the soldier unit. However, the Final Office Action fails to identify any specific action in the Jacobsen that could meet the limitation relating to providing, to the soldier unit, a value indicating the physical activity.

Thus, there are multiple reasons that the rejection of claim 66 should be reversed. The rejections of the dependent claims should be reversed at least for the same reasons. Moreover, as pointed out above, the dependent claims recite limitations that further distinguish over the cited art, and some even expressly contradict reasoning in the Office Action used to reject the claims.

Independent Claim 186

The Office Action (page 3) includes claim 186 in the list of claims rejected under 35 U.S.C. 102 based on Jacobsen. However, no basis for this rejection is provided and claim 186 is discussed in connection with a rejection under 35 U.S.C. 103. Accordingly, reasons that the rejection of claim 186 should be reversed are provided below in connection with the rejection under 35 U.S.C. 103.

Independent Claim 193

The Office Action (page 9) rejects claim 193 for the same reason as claim 66. For reasons that should be clear from the discussion of Jacobsen, above, the rejection should be reversed at least because Jacobsen does not disclose:

“automatically modeling values of other state attributes based at least in part on the sent values of the state attributes by computing a value characterizing an activity of the user from the sent values of the state attributes of a lower level of abstraction”
or
“providing a value for at least one of the modeled other state attributes to the mobile computer, said value indicating the activity of the user.”

Claim Rejections – 35 U.S.C. §103

The Final Office Action rejects claims 186-189 under 35 U.S.C. §103(a) as being unpatentable over Jacobsen et al. in view of Grube et al. (US Patent No. 6,031,455). Applicants respectfully submit that the Office Action incorrectly rejects claim 186 at least because of an incorrect interpretation of Jacobsen, as pointed out above.

If properly interpreted, neither Jacobsen nor Grube discloses:

“modeling a second value of a second state attribute based at least in part on the first values, the second value modeled by selecting a value characterizing a user activity from a set comprising driving and walking;”
or
“providing at least a portion of the current state from the system, the at least a portion of the current state including the second value indicating the user activity.”

The Final Office Action (page 10) rewrites the claim to effectively ignore the recitation of: “...the second value modeled by selecting a value characterizing a user activity from a set comprising driving and walking.” As a result, no reference is cited as meeting this limitation. Such an approach to making a rejection is legally improper and requires reversal. When the claim as actually written is considered, it is clear that no portion of either reference meets this limitation. For this reason alone, the rejection must be reversed.

As a further reason that the rejection must be reversed, the Final Office Action provides no reason that one of skill in the art would have combined Jacobsen and Grube. For this further reason alone, the Final Office Action fails to make a *prima facie* case of obviousness, and the rejection must be reversed.

Omission of a reason to combine is not a mere technical defect, but reveals a fundamental flaw in the rejection. Grube relates to monitoring environmental conditions as part of a satellite communication system. There is no logical reason why actions taken as part of monitoring environmental conditions for satellite communication would have been used in connection with the soldier units of Jacobsen. Further, even if the teachings Grube might somehow have been applied to a system as in Jacobsen, there is no reason that they would have led to what is recited in the claim.

Thus, there are multiple reasons that the rejection of claim 186, and of dependent claims 187-189, should be reversed.